

**APRIL 29, 2004**

We concur: Spencer, P.J.  
Vogel (Miriam A.), J.

April 29, 2004 (Continued)

## DIVISION ONE (Continued)

B167212 People (Not for Publication)  
v.  
Calix

The judgment is affirmed.

Spencer, P.J.

We concur: Ortega, J.  
Vogel (Miriam A.), J.

B161574 People (Not for Publication)  
v.  
Clair

The judgment is affirmed.

Spencer, P.J.

We concur: Ortega, J.  
Mallano, J.

DIVISION TWO

B170307 People (Not for Publication)  
v.  
Mercer

The Court:

The judgment is affirmed.

Boren, P.J., Doi Todd, J., Ashmann-Gerst, J.

DIVISION TWO (Continued)

B163175 People (Not for Publication)  
v.  
Merino

The order appealed from is affirmed.

Ashmann-Gerst, J.

We concur:   Nott, Acting P.J.  
Doi Todd, J.

B167405 People (Not for Publication)  
v.  
Heath

The Court:

The judgment is affirmed.

Boren, P.J., Nott, J., Ashmann-Gerst, J.

B170497      Los Angeles County, D.C.S.      (Not for Publication)  
v.  
Robert R., Sr.

The order terminating father's parental rights is reversed and the matter is remanded with directions to the juvenile court to instruct DCFS to provide notice to the tribes as required by law and then make a determination as to whether ICWA applies.

Ashmann-Gerst, J.

We concur:   Boren, P.J.  
                      Nott, J.

## DIVISION TWO (Continued)

B165450      People                                  (Certified for Partial Publication)  
v.  
Perez

The true finding on the criminal street gang allegation is reversed and the life term imposed for that allegation on count 1, attempted murder, is stricken. The judgment is reversed as to count 3, criminal threat, with directions as follows: If the People do not bring appellant to trial on that count within 60 days after the filing of the remittitur in the trial court pursuant to Penal Code section 1382, subdivision (a)(2), the judgment shall be deemed modified to reflect a conviction of attempted criminal threat in count 3 and a consecutive sentence of four months on that count. In all other respects, the judgment is affirmed.

Doi Todd, J.

We concur:   Boren, P.J.  
                      Nott, J.

B165328      People  
v.  
Dennis

Filed order denying petition for rehearing.

B165650 Liberty Mutual Fire Insurance Co., et al. (Not for Publication)  
v.  
Travelers Property Casualty Insurance Co.

The judgment is affirmed. Travelers is awarded its costs on appeal.

Doi Todd, J.

We concur:   Nott, Acting P.J.  
                  Ashmann-Gerst, J.

DIVISION TWO (Continued)

B163366      Farrell      (Not for Publication)  
v.  
21st Century Industries

The judgment is favor of respondent is reversed. Respondent is ordered to bear appellant's cost of appeal.

Doi Todd, J.

We concur:   Boren, P.J.  
                  Nott, J.

B166762      Prospect Health Source Medical Group, Inc.      (Not for Publication)  
v.  
Dallalzadeh, et al.

The appeal is dismissed. The parties to bear their own costs on appeal.

Ashmann-Gerst, J.

We concur:   Boren, P.J.  
                  Doi Todd, J.

B167284      Stryker      (Not for Publication)  
v.  
Antelope Valley Community College District, et al.

The judgment is affirmed. The District shall recover its costs on appeal.

Ashmann-Gerst, J.

We concur:   Boren, P.J.  
                  Doi Todd, J.

## DIVISION TWO (Continued)

B169714      Leong      (Not for Publication)  
v.  
Tritech Engineering Associates

The order and judgment are affirmed. Trittech is entitled to its costs on appeal.

Ashmann-Gerst, J.

We concur:   Boren, P.J.  
                      Nott, J.

B159732      Dalla, Inc.      (Not for Publication)  
v.  
Andre Petrossian, et al.

The order granting respondents' motion for judgment is affirmed. Respondents are entitled to their costs on appeal.

Ashmann-Gerst, J.

We concur:   Nott, Acting P.J.  
Doi Todd, J.

B165199 Bankworth (Not for Publication)  
v.  
Serap, et al.

The portion of the judgment awarding the Bank \$100,000 punitive damages against the Seraps is reversed. The remainder of the judgment is affirmed. The parties shall bear their costs on appeal.

Ashmann-Gerst, J.

We concur:   Nott, Acting P.J.  
Doi Todd, J.

DIVISION TWO (Continued)

B167785      Crowell      (Not for Publication)  
v.  
Downey Regional Medical Center Hospital, Inc.

The order sustaining the demurrer is affirmed in part and reversed as to the fourth cause of action only. The order awarding respondent attorney fees is reversed. The parties to bear their own costs on appeal.

Ashmann-Gerst, J.

We concur:   Boren, P.J.  
                  Nott, J.

B162277      Otero et al.      (Not for Publication)  
v.  
Kaiser Foundation Health Plans Inc., et al.

We affirm the order sustaining respondents' demurrers to the causes of action for fraud, negligent misrepresentation and negligence based on premises liability in the FAC. We reverse the order sustaining the demurrers to the causes of action for violations of the CLRA and the Education Code, negligence and negligence per se and breach of contract. The parties to bear their own costs on appeal.

Doi Todd, J.

We concur:   Nott, Acting P.J.  
                  Ashmann-Gerst, J.

April 29, 2004 (Continued)

## DIVISION TWO (Continued)

B163865      Muhammad      (Not for Publication)  
v.  
Ben Franklin Bank of Illinois

The judgment of the trial court is affirmed. BFB is entitled to its costs on appeal.

Ashmann-Gerst, J.

We concur:   Boren, P.J.  
                      Nott, J.

DIVISION THREE

B165497      Jane Hemady      (Not for Publication)  
v.  
Long Beach Unified School District, et al.

The judgment is reversed. Appellant(s) to recover costs.

Kitching, J.

We concur:   Croskey, Acting P.J.  
                  Aldrich, J.

[illegible]

The matter is remanded to the superior court for re-sentencing pursuant to section 1170. subdivision (d).

Klein, P.J.

We concur:   Croskey, J.  
                      Aldrich, J.



April 29, 2004 (Continued)

### DIVISION THREE (Continued)

B150919 People (Certified for Partial Publication)  
v.  
Cervantes, et al.

The judgment as to Cervantes is ordered modified with respect to count II to reflect a term of life with the possibility of parole. In all other respects, the judgment is affirmed. The judgment as to Martinez is ordered modified with respect to count II to strike the two-year determinate term attributable to the criminal street gang enhancement and to reflect a minimum term before parole eligibility of 15 years. In all other respects, the judgment is affirmed. The judgment as to Morales is affirmed. As to Cervantes and Martinez, the clerk of the superior court shall prepare and forward to the Department of Corrections amended abstracts of judgment.

Klein, P.J.

We concur:   Kitching, J.  
                      Aldrich, J.

B164263      People  
v.  
Jonathan P. Martinez

Appellant's petition for rehearing is denied (Rule 25(c), California Rules of Court. I would deny the petition Aldrich, J.

## DIVISION FIVE

B161571      Reginald Williams      (Not for Publication)  
v.  
John D. Williams

The judgment is affirmed. Respondent(s) to recover costs.

Armstrong, J.

We concur:   Turner, P.J.  
                     Grignon, J.

April 29, 2004 (Continued)

## DIVISION SEVEN

B164218      People  
v.  
Cooper

Filed order denying petition for rehearing.

## DIVISION EIGHT

B165161 People (Not for Publication)  
v.  
Padilla

The judgment is affirmed.

Boland, J.

We concur: Rubin, Acting P.J.  
Flier, J.

B167093 People (Not for Publication)  
v.  
Johnson

The judgment is affirmed.

Boland, J.

We concur: Cooper, P.J.  
Flier, J.

B164540      People  
v.  
Bailey

Filed order vacating submission of January 27, 2004. Additional time is needed to complete and file the opinion in this matter. Cause resubmitted.

## DIVISION EIGHT (Continued)

B166087      Tony Martinez, Jr.  
v.  
Master Protection Corporation d.b.a.  
Fire Master

Filed order certifying opinion for publication.

B158597      Berman et al.      (Not for Publication)  
v.  
Gulf Insurance Company

The judgment is affirmed. Respondent is awarded costs on appeal.

Cooper, P.J.

We concur: Rubin, J.  
Flier, J.

B165931      Arias, et al.      (Not for Publication)  
v.  
City of Manhattan Beach

The portion of the judgment that denied City the award of costs for preparation of the administrative record is reversed. The judgment is otherwise affirmed. The cause is remanded to the trial court for further consideration and findings in accordance with this opinion. City to recover costs on appeal.

Cooper, P.J.

We concur: Rubin, J.  
Boland, J.

DIVISION EIGHT (Continued)

B162234      American Motorists Insurance Company      (Not for Publication)  
v.  
Gottfurcht as Trustee, etc.

The judgment is affirmed. Each party to bear their own costs.

Cooper, P.J.

We concur:    Boland, J.  
                  Flier, J.

B162563      Citizens Against Gridlock in El Segundo, et al. (Not for Publication)  
v.  
City of El Segundo, et al.

The denial of the petition for writ of mandate is affirmed. Each party to bear its own costs.

Cooper, P.J.

We concur:    Rubin, J.  
                  Flier, J.